

Rukmini and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Oct-20-2016

Judge : The Honourable Dr. Justice Vineet Kothari

Appeal No. : Writ Petition Nos. 49283 to 49293 of 2016 (LB-RES)

Appellant : Rukmini and Others

Respondent : State of Karnataka and Others

Judgement :

Vineet Kothari, J.

1. The petitioners, 11 in number, are in the second round of litigation before this Court after the earlier in the case of Smt. Rukmini and Others v. State of Karnataka and Others W.P. Nos. 27925 to 27938 of 2016, dated 8-7-2016 came to be disposed of by this Court on 8-7-2016 directing the Chief Officer of the respondent-Belur Town Municipality to consider the representation of the petitioners in respect of their shops given on lease by the respondent-Municipal Council and decide the same in accordance with law.

2. Paragraphs 3 and 4 of the aforesaid order are quoted below for ready reference:

"3. Having heard the learned Counsel for the petitioners, this Court of the opinion that the impugned notices were issued only on 20-4-2016 taking due process of law under the aforesaid Act and the petitioners ought to have responded to the same with whatever objections they have.

4. In the circumstances, the writ petitions are disposed of as premature with a direction to the petitioners to appear before the respondent 3-Chief Officer, in the first instance on 18-7-2016, and the respondent 3-Chief Officer, after considering the objections at Annexure-E series and/or further objections, if any, to be filed before him, he shall pass appropriate orders in accordance with law. The said representations or objections shall be decided by the authority concerned within two months from today with no further extension permissible, and for a period of two months from today, the interim order granted in favour of the petitioners by a co-ordinate Bench of this Court on 10-5-2016 directing respondents 2 and 3 not to dispossess the petitioners from the respective premises in question shall continue and thereafter it will abide by the decision of the respondent 2-Chief Officer."

3. It appears that in terms of the said directions given by this Court, the respondent-Chief Officer, Belur Town Municipality, initially served notices dated 22-7-2016 vide Annexure-F series annexed with these writ petitions and referring to one Government Circular No. NAE-509-GEL-2014, dated 14-8-2015, informed the petitioners that if the lease period of the shops in question was over, as per the said Government Circular, the respondent-Municipal Council was bound to put the shops in question for public auction on lease basis and therefore, the petitioners may also participate in such process of public auction, if they desire to do so. The petitioners appear to have filed their replies in pursuance of the said notice vide Annexure-G series on 30-7-2016. The petitioners, in the said replies, have indicated that the shops in question are their source of livelihood and therefore the lease period may be extended by the respondent-Municipal Council.

4. Neither the authority on the part of the Town Municipal Council, Belur, to initiate auction proceedings was challenged nor the validity of the aforesaid Government Circular dated 14-8-2015 was challenged by the petitioners before the said authority. The said authority appears to have later on given the final notices to

these petitioners vide Annexure-H series on 23-8-2016 again referring to the said Government Circular dated 14-8-2015 and their replies and has informed the petitioners that in view of the said Government Circular, the respondent-Municipal Council was bound to put the shops for auction whose lease period have come to an end and to put the same for auction and if there is any Court order restraining the respondent-Municipal Council, the same may be produced. Against these final notices, the petitioners have also filed their representations on 25-8-2016 again reiterating their request for extension of the lease period and thereafter seem to have approached this Court by way of present petitions.

5. Learned Counsel for the petitioners has urged that the due procedure prescribed under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 ('Act' for short) has not been followed in the present case and neither a Competent Officer as required under Section 1 of the Act was appointed nor any order was passed for evicting unauthorised occupants as per Section 5 of the said Act for the reasons to be recorded therein and therefore, the petitioners are sought to be illegally evicted from these premises and their right to appeal against such orders passed under Section 5 of the Act before the District Judge having jurisdiction of the area has also been indirectly taken away by the respondents. Hence, these writ petitions.

6. Having heard the learned Counsel for the petitioners, this Court is of 1 opinion that no interference is required to be made at the instance of the petitioners for extension of their lease period by this Court.

7. The Government Circular dated 14-8-2015 does not appear to have been brought to the notice of this Court while passing the earlier order on 8-7-2016 disposing of the earlier set of writ petitions filed by the present petitioners. There is no mention of the Government Circular in the order, though learned Counsel for the petitioners urged that the same was placed on record in the said writ petitions. Be that as it may. The relevant extract of the Government Circular dated 14-8-2015 Annexure-B now produced with these writ petitions along with translated copies thereof, in sum and substance, provides that as per the provisions of Section 72(1) and 72(2) of the Karnataka Municipalities Act, 1964, the Municipal

Council is vested with the powers of lease/sale/dispose of the immovable property in the town and in pursuance of the judgment of this Court in the case of W.P. Nos. 5162-623 of 2014 (Mohan P. Son v. State Government) and earlier Circular No. NAE 221 GEL 2009, dated 26-10-2009, the State Government has taken the decision and modifying the earlier guidelines for the existing old commercial complexes, the tenants residing/occupying, if their lease period has concluded as per the Agreement, such commercial complexes may be disposed of by a public notice through public auction, in terms of Section 72(1) of the Karnataka Municipalities Act, 1964.

8. The relevant portion of the said Circular is quoted below for ready reference:

"1. Commercial shops for which lease period has concluded may be disposed through public auction as per Karnataka Transparency in Public Procurements Act, 1999 (K.T.T.P.) and the Karnataka Transparency in Public Procurements Rules, 2000 and orders issued thereafter, by issuing press notice/advertisement.

2. In the existing old commercial complexes, tenants are residing/occupying, if their lease period has concluded as per the Agreement, process of public auction may be initiated at least/minimum 1 or 2 months before the date of conclusion of lease period, process may be concluded minimum a week before the conclusion or the old lease period.

3. If the old tenants fail in the public auction, shops may be got vacated on the date of conclusion of the lease period, from the next day the shops may be handed over to new tenants, in the event, for reasonable and inevitable reasons, old tenants cannot vacate on the last day of the lease period, hand over the vacant possession, in such circumstances, after obtaining appropriate undertaking, maximum one month time may be given, for the extended period/days, rent fixed newly in the Auction, may be collected/recovered.

4. Lease may be given for a period of 12 years only.

5. When shops are given on lease basis, local body may determine/fix monthly lease rent amount."

9. The validity of the said guidelines now laid down by the State Government are not in challenge before this Court nor the jurisdiction of the respondent-Chief Officer, Belur Municipal Council is under challenge. However, the contention of learned Counsel for the petitioners is that due process as prescribed under Sections 4 and 5 of the Act has not been followed is not well-founded. The issuance of notice dated 22-7-2016 in pursuance of the direction of this Court and representations of the petitioners thereafter culminating in the final notices issued by the respondent-Municipal Council on 23-8-2016 complies with the due process of law as prescribed in the said Act. The same also appears to be in consonance with the Government Circular dated 14-8-2015 quoted above.

10. It is true that the petitioners being erstwhile lessees are also equally entitled to participate in the auction process as envisaged in the said Circular dated 14-8-2015, but their lease period cannot be extended just like that in the teeth of the said Circular dated 14-8-2015. Admittedly, since the lease period of the present persons for the shops in question has come to an end, the respondent-Municipal Council is bound to proceed further for putting-up the same to be leased out again on auction basis to be given on lease to the bidders who give highest bid for the rentals of the shops in question. The respondent-Municipal Council therefore cannot be mandated to extend the lease period of the petitioners at the same old rate of rents paid by them.

11. On the basis of the aforesaid, this Court does not find any good ground to interfere with the process of the respondent-Municipal Council in terms of the aforesaid Government Circular dated 14-8-2015 and there is no merit in the present writ petitions and they are liable to be dismissed.

Accordingly, the writ petitions are dismissed. No costs.

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